

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

TAMMY COVINGTON and)	
JEFFREY COVINGTON,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 19-cv-00718-PRW
)	
CSAA FIRE AND CASUALTY)	
INSURANCE, d/b/a AAA FIRE AND)	
CASUALTY INSURANCE COMPANY, INC.)	
)	
Defendant.)	

DEFENDANT’S OBJECTIONS TO PLAINTIFF’S UNTIMELY EXHIBIT LIST

Defendant objects to each and every exhibit listed by Plaintiffs as Plaintiffs were obligated, pursuant to the Scheduling Order [Dkt. No. 12], to file their Final Witness and Exhibit Lists no later than March 1, 2020. The Scheduling Order explicitly provides: *“Except for good cause shown, no witness will be permitted to testify and no exhibit will be admitted in any party’s case in chief unless such witness or exhibit is included in the party’s filed witness or exhibit list.”* (Emphasis in original). Plaintiffs did not seek leave from the Court to file their untimely Final Exhibit List. Plaintiffs did not show good cause as to why the Final Exhibit List was not timely filed. As stated by Judge Dishman in a recent order, *Godfrey v. CSAA*, CIV-19-329-JD, Dkt. No. 88, at 2 (denying a request for CSAA to file out-of-time):

Good cause generally requires the movant to show that the “scheduling deadlines cannot be met despite the movant’s diligent efforts.” *Gorsuch, Ltd., B.C. v. Wells Fargo Nat. Bank Ass’n*, 771 F.3d 1230, 1240 (10th Cir. 2014) (quotation and bracketing omitted); *see also Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 988-89 (10th Cir. 2019) (citing cases that explain

“failure on the part of counsel to proceed promptly with the normal processes of . . . trial preparation” is not good cause, and “the focus of the inquiry is upon the moving party’s reasons for seeking modification”) (internal quotation marks and citations omitted).

CSAA would made the further objections to Plaintiff’s untimely Final Exhibit List:

No.	DESCRIPTION	OBJECTION	GROUND
1.	CSAA Policy and Declarations	Y	Duplicative of materials in Exhibit 2.
2.	CSAA Claim File	Y	Bulk listing of entire claim file is unnecessary, unwieldy and includes irrelevant documents.
3.	Audio Recordings of conversations between Plaintiffs’ public adjuster and agents/employees of Defendant	Y	Foundation, authentication, hearsay, relevance, undue prejudice.
4.	Boardwalk Floor Company Inspection Report	Y	Duplicative of materials in Exhibit 2.
5.	Hi-Tech Plumbing & Leak Detect, Inc.	Y	Duplicative of materials in Exhibit 2.
6.	Ian’s Enterprise Claim File	Y	Hearsay, overly vague, unclear description and whether entire file has been produced; potentially includes irrelevant documents.
7.	Discovery Responses of Defendants	Y	Vague, unclear what discovery responses Plaintiff seeks to admit; potential issues with relevance, prejudice.
8.	Discovery Responses of Plaintiffs	Y	Vague, unclear what discovery responses Plaintiff seeks to admit; potential issues with relevance, prejudice.
9.	Photographs of the Damage To Property	Y	Vague, unclear if such photographs have been produced; authentication

No.	DESCRIPTION	OBJECTION	GROUND
10.	BoardWalk Floor Company Inspection Report	Y	Duplicative of materials in Exhibit 2; also duplicative of Exhibit 4
11.	Hi-Tech Plumbing & Leak Detect, Inc.	Y	Duplicative of materials in Exhibit 2; duplicative of Exhibit 4.
12.	Don Ray Sharp Report	Y	Duplicative of materials in Exhibit 2
13	Deposition Testimony of Alan Heise	Y	Witness has not been deposed; improper as there is no suggestion that witness is unavailable.
14	Premier Carpet and Restoration Invoices and Report	Y	Duplicative of materials in Exhibit 2.
15	Smith Brothers Heat and Air Report	Y	Duplicative of materials in Exhibit 2.

Respectfully submitted,

s/ Joshua K. Hefner

Gerard F. Pignato, OBA No. 11473

Matthew C. Kane, OBA No. 19502

Joshua K. Hefner, OBA No. 30870

RYAN WHALEY COLDIRON JANTZEN

PETERS & WEBBER PLLC

400 North Walnut Avenue

Oklahoma City, Oklahoma 73104

Telephone: 405-239-6040

Facsimile: 405-239-6766

Email: jerry@ryanwhaley.com

mkane@ryanwhaley.com

jhefner@ryanwhaley.com

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, I electronically transmitted the attached document to:

Douglas J. Shelton – dshelton@sheltonlawok.com

Erica R. Mackey – emackey@sheltonlawok.com

s/ Joshua K. Hefner

JOSHUA K. HEFNER